

1 (hereinafter sometimes EWS), (hereinafter collectively
2 "Plaintiffs") as pled in Plaintiffs' Second Amended Complaint
3 (hereinafter sometimes "SAC") as follows:

4 1. Answering paragraph 1 of Plaintiffs' SAC, SHAO denies the
5 allegations contained therein, but admits that he does reside in
6 Canada, and that KENNEDY is the majority member of EWS.

7 2. Answering paragraph 2 of Plaintiffs' SAC, SHAO denies all
8 allegations contained therein based on lack of information and
9 belief, but admits that KENNEDY solicited SHAO to form a Chinese
10 company, that they spent time discussing the logistics of setting
11 up a Chinese company and, thereafter started EWS, a California LLC.

12 3. Answering paragraph 3 of Plaintiffs' SAC, SHAO admits
13 that he and KENNEDY are Members and Managers of EWS. As to the
14 remaining allegations SHAO lacks information or belief to either
15 admit or deny, and on that basis denies the balance of paragraph 3.

16 4. Answering paragraph 4 of Plaintiffs' SAC, SHAO denies any
17 ownership interest in KEYNOR ASIA & I/E CO., LTD. (hereinafter
18 "KEYNOR ASIA"), a named Defendant herein. SHAO denies that he ever
19 charged "unreasonably high prices for Chinese stone product." SHAO
20 further denies that he " . . . shipped poor quality material that
21 was often unmarketable by EWS." As to the remaining allegations
22 contained in Plaintiffs' paragraph 4, SHAO denies based on lack of
23 information and/or knowledge.

24 5. Answering paragraph 5 of Plaintiffs' SAC, SHAO denies
25 each and every allegation contained therein.

26 6. Answering paragraph 6 of Plaintiffs' SAC, SHAO denies
27 each and every allegation contained therein.

28 / / /

1 7. Answering paragraph 7 of Plaintiffs' SAC, SHAO admits the
2 allegations contained therein.

3 8. Answering paragraph 8 of Plaintiffs' SAC, SHAO admits the
4 allegations contained therein.

5 9. Answering paragraph 9 of Plaintiffs' SAC, SHAO admits the
6 allegations contained therein, except SHAO denies that he resides
7 China.

8 10. Answering paragraph 10 of Plaintiffs' SAC, SHAO admits
9 that KEYNOR ASIA is a Chinese corporation in the business of
10 exporting goods with a principal place of business in Shanghai,
11 China. SHAO denies that he and/or his spouse, Han Sui, has an
12 ownership interest in KEYNOR ASIA. SHAO denies the remaining
13 allegations contained in paragraph 10 based on lack of information
14 or knowledge.

15 11. Answering paragraph 11 of Plaintiffs' SAC, SHAO admits
16 the allegations contained therein.

17 12. Answering paragraph 12 of Plaintiffs' SAC, SHAO admits
18 that KEYNOR ASIA acted as the middleman between EWS and the Chinese
19 stone producers, directly invoiced EWS in California, and collected
20 money from EWS in California. SHAO, based on lack of information
21 or belief, denies each and every remaining allegation contained
22 therein.

23 13. Answering paragraph 13 of Plaintiffs' SAC, SHAO, based on
24 lack of knowledge or information, denies each and every allegation
25 contained therein, but admits this Court has jurisdiction.

26 14. Answering paragraph 14 of Plaintiffs' SAC, SHAO, based on
27 lack of knowledge or information, denies each and every allegation
28 contained therein, but admits venue is proper.

1 15. Answering paragraph 15 of Plaintiffs' SAC, SHAO, based on
2 lack of knowledge or information, denies each and every allegation
3 contained therein.

4 16. Answering paragraph 16 of Plaintiffs' SAC, denies each
5 and every allegation contained therein.

6 17. Answering paragraph 17 of Plaintiffs' SAC, SHAO denies
7 each and every allegation contained therein, except that KENNEDY
8 was the majority member of EWS from its inception.

9 18. Answering paragraph 18 of Plaintiffs' SAC, SHAO, based
10 on lack of knowledge or information, denies each and every
11 allegation contained therein.

12 19. Answering paragraph 19 of Plaintiffs' SAC, SHAO denies
13 each and every allegation contained therein, except that EWS
14 consists of only two members: KENNEDY who owns 70% of the company
15 and SHAO who owns 30% of the company.

16 20. Answering paragraph 20 of Plaintiffs' SAC, SHAO, based on
17 lack of knowledge or information, denies each and every allegation
18 contained therein, but admits that KENNEDY was interested in
19 creating a new company for purposes of importing stone.

20 21. Answering paragraph 21 of Plaintiffs' SAC, SHAO admits
21 that he is a resident of Canada, and that Robert Pastor (a former
22 members of EWS, whose membership percentage was purchased by
23 KENNEDY) introduced him (SHAO) to KENNEDY and denies each and every
24 remaining allegation contained therein.

25 / / /

26 / / /

27 / / /

28 / / /

1 22. Answering paragraph 22 of Plaintiffs' SAC, SHAO admits
2 that he went to a stone show and stone quarries in China with an
3 individual sent by KENNEDY, during which SHAO acted as a
4 translator, but denies each and every remaining allegation
5 contained therein based on lack of information and belief.

6 23. Answering paragraph 23 of Plaintiffs' SAC, SHAO admits
7 the allegations contained therein.

8 24. Answering paragraph 24 of Plaintiffs' SAC, SHAO admits
9 that KENNEDY met him in Beijing, China in 2005, but denies the
10 balance of the allegations based upon lack of knowledge or
11 information.

12 25. Answering paragraph 25 of Plaintiffs' SAC, SHAO admits to
13 spending time with KENNEDY traveling to stone quarries in China.
14 SHAO admits to having discussions with KENNEDY regarding the
15 quality, type, and color of stone that would have been marketable
16 in the United States. SHAO admits he and KENNEDY discussed forming
17 a new company. SHAO denies the balance of the allegations based
18 upon lack of knowledge or information.

19 26. Answering paragraph 26 of Plaintiffs' SAC, SHAO denies
20 the company began operating on May 9, 2006, but admits the balance
21 of the allegations contained in paragraph 26.

22 27. Answering paragraph 27 of Plaintiffs' SAC, SHAO denies
23 the allegations contained therein, but admits that KEYNOR ASIA
24 initially agreed to charge EWS a three percent (3%) service fee
25 over the price EWS agreed to pay KEYNOR ASIA, which was later
26 raised to a five percent (5%) service fee.

27 / / /

28 / / /

1 28. Answering paragraph 28 of Plaintiffs' SAC, SHAO denies
2 the allegations based upon lack of information or knowledge, but
3 admits he looked into issues that arose between EWS and KEYNOR
4 ASIA when requested.

5 29. Answering paragraph 29 of Plaintiffs' SAC, SHAO generally
6 denies the allegations therein, but admits that EWS began selling
7 Chinese stone products early in 2006.

8 30. Answering paragraph 30 of Plaintiffs' SAC, SHAO denies
9 each and every allegation contained therein.

10 31. Answering paragraph 31 of Plaintiffs' SAC, SHAO admits
11 meeting KENNEDY in 2008 and admits informing KENNEDY that KEYNOR
12 ASIA's warehouse manager was taking bribes and that some of the
13 material in the KEYNOR ASIA warehouse was "bad material" and denies
14 the balance of the allegations contained therein.

15 32. Answering paragraph 32 of Plaintiffs' SAC, SHAO admits
16 that he was in China with KENNEDY, and recalls stating that there
17 was concern regarding KENNEDY paying dividends pursuant to the
18 Operating Agreement. As to the remaining allegations in
19 paragraph 32, SHAO denies each and every one of those allegations.

20 33. Answering paragraph 33 of Plaintiffs' SAC, SHAO admits
21 that the EWS Operating Agreement states as indicated, and further
22 admits that SHAO was entitled to paid dividends.

23 34. Answering paragraph 34 of Plaintiffs' SAC, SHAO denies
24 each and every allegation contained therein based upon lack of
25 knowledge or information, but admits to communicating to KENNEDY
26 monies owed by EWS to KEYNOR ASIA.

27 / / /

28 / / /

1 35. Answering paragraph 35 of Plaintiffs' SAC, SHAO denies
2 each and every allegation contained therein based upon lack of
3 knowledge or information. SHAO, however, is aware that KENNEDY
4 unilaterally fired Pastor.

5 36. Answering paragraph 36 of Plaintiffs' SAC, SHAO admits he
6 claimed it was "too late" to cancel many of the orders, as they had
7 already been processed, and denies each and every remaining
8 allegation contained therein.

9 37. Answering paragraph 37 of Plaintiffs' SAC, SHAO admits
10 the allegations contained therein.

11 38. Answering paragraph 38 of Plaintiffs' SAC, SHAO denies
12 that he raised prices on any product from China, because, as
13 previously stated, SHAO had no ownership interest in KEYNOR ASIA.
14 SHAO denies that the quality of the product from China continued to
15 decline. SHAO admits to receipt of Exhibit 2 (e-mail from Lynn
16 Tenuta of EWS to SHAO dated October 10, 2008), to the Plaintiffs'
17 SAC. As to the remaining allegations contained in paragraph 38,
18 SHAO denies them based on lack of information or knowledge.

19 39. Answering paragraph 39 of Plaintiffs' SAC, SHAO admits
20 receiving and replying to the e-mail attached to Plaintiff's SAC as
21 Exhibit 3 (e-mail from KENNEDY to SHAO dated October 31, 2008) but,
22 based on lack of information and belief denies the balance of
23 allegations contained in paragraph 39.

24 40. Answering paragraph 40 of Plaintiffs' SAC, based on lack
25 of information or knowledge, SHAO denies each and every allegation
26 contained therein, with the exception that SHAO admits to receiving
27 and sending the e-mail (dated January 30, 2009) attached to the
28 Plaintiffs' SAC as Exhibit 4.

1 41. Answering paragraph 41 of Plaintiffs' SAC, SHAO denies
2 making vague and cryptic references regarding the dividend, but
3 admits claiming he was owed dividends owed him by EWS. SHAO admits
4 to sending and receiving Exhibit 5 (e-mail to Lynn Tenuta of EWS
5 dated March 12, 2009) of the Plaintiffs' SAC. SHAO denies the
6 remaining allegations contained in paragraph 41.

7 42. Answering paragraph 42 of Plaintiffs' SAC, SHAO admits
8 that he drafted the e-mails referenced in Exhibit 6 (e-mails
9 to/from KENNEDY/SHAO dated March 24, March 25 and April 1, 2009) to
10 the Plaintiffs' SAC, but denies the meaning attributed to said
11 e-mails as reflected in paragraph 42.

12 43. Answering paragraph 43 of Plaintiffs' SAC, SHAO admits to
13 sending the e-mails as referenced in Exhibit 7 (e-mail to Ada Yu
14 dated October 14, 2010 and e-mail to KENNEDY and Lynn Tenuta dated
15 October 16, 2010) of Plaintiffs' SAC as well as those referenced in
16 Exhibit 8 of Plaintiffs' SAC (e-mail from SHAO to Lynn Tenuta and
17 KENNEDY dated December 17, 2010), and denies the remaining
18 allegations contained in paragraph 43.

19 44. Answering paragraph 44 of Plaintiffs' SAC, SHAO denies
20 that KENNEDY asked SHAO to photograph material before it was
21 shipped from China, but admits to sending the e-mail reflected in
22 Exhibit 9 to Plaintiffs' SAC (e-mail from SHAO to Lynn Tenuta and
23 KENNEDY dated December 31, 2010). SHAO denies, based on lack of
24 information and belief, the remaining allegations contained in
25 paragraph 44.

26 45. Answering paragraph 45 of Plaintiffs' SAC, SHAO denies he
27 is in possession of the alleged \$75,000.00 deposit for stone, but
28 based on lack of information and belief believes EWS has stopped

1 placing orders with KEYNOR ASIA, and that KEYNOR ASIA may possess
2 said monies. Based on lack of information and belief, SHAO denies
3 the remaining allegations contained in paragraph 45.

4 46. Answering paragraph 46 of Plaintiffs' SAC, based on lack
5 of information or belief, SHAO denies each and every allegation
6 contained therein.

7 47. Answering paragraph 47 of Plaintiffs' SAC, based on lack
8 information or belief, SHAO denies each and every allegation
9 contained therein.

10 48. Answering paragraph 48 of Plaintiffs' SAC, SHAO denies
11 each and every allegation contained therein.

12 49. Answering paragraph 49 of Plaintiffs' SAC, SHAO denies
13 each and every allegation contained therein.

14 50. Answering paragraph 50 of Plaintiffs' SAC, SHAO denies
15 causing damages to EWS and, based on lack of information or belief,
16 denies each and every remaining allegation contained therein.

17 51. Answering paragraph 51 of Plaintiffs' SAC, SHAO denies
18 each and every allegation contained therein.

19 52. Answering paragraph 52 of Plaintiffs' SAC, SHAO denies he
20 is possession of the \$75,000.00 deposit for material and, based on
21 lack of information or belief, denies each and every remaining
22 allegation contained in paragraph 52. SHAO continues to maintain
23 his entitlement to a dividend from EWS.

24 53. Answering paragraph 53 of Plaintiffs' SAC, based upon
25 lack of information or belief, SHAO denies each and every
26 allegation contained therein.

27 / / /

28 / / /

1 54. Answering paragraph 54 of Plaintiffs' SAC, SHAO
2 incorporates by reference his responses to paragraphs 1 through 53
3 of the Complaint as though fully set forth herein.

4 55. Answering paragraph 55 of Plaintiffs' SAC, SHAO admits
5 paragraph 2.6 of the Operating Agreement designates the Members of
6 EWS as managers of the company. Based on lack of information or
7 belief, SHAO denies each and every remaining allegation as
8 contained in paragraph 55.

9 56. Answering paragraph 56 of Plaintiffs' SAC, based upon
10 lack of information or belief, SHAO denies every allegation
11 contained therein.

12 57. Answering paragraph 57 of Plaintiffs' SAC, SHAO denies
13 each and every allegation contained therein.

14 58. Answering paragraph 58 of Plaintiffs' SAC, SHAO denies
15 each and every allegation contained therein.

16 59. Answering paragraph 59 of Plaintiffs' SAC, SHAO denies
17 each and every allegation contained therein.

18 60. Answering paragraph 60 of Plaintiffs' SAC, SHAO
19 incorporates by reference his responses to paragraphs 1 through 59
20 of the Complaint as though fully set forth herein.

21 61. Answering paragraph 61 of Plaintiffs' SAC, SHAO denies
22 each and every allegation contained therein.

23 62. Answering paragraph 62 of Plaintiffs' SAC, SHAO denies
24 each and every allegation contained therein.

25 63. Answering paragraph 63 of Plaintiffs' SAC, SHAO denies
26 each and every allegation contained therein.

27 64. Answering paragraph 64 of Plaintiffs' SAC, SHAO denies
28 each and every allegation contained therein.

1 65. Answering paragraph 65 of Plaintiffs' SAC, SHAO denies
2 each and every allegation contained therein, but admits to having
3 transmitted KEYNOR ASIA's warehouse invoices to EWS one or two
4 times.

5 66. Answering paragraph 66 of Plaintiffs' SAC, SHAO denies
6 each and every allegation contained therein except that SHAO was a
7 member of EWS.

8 67. Answering paragraph 67 of Plaintiffs' SAC, SHAO denies
9 each and every allegation contained therein.

10 68. Answering paragraph 68 of Plaintiffs' SAC, SHAO denies
11 each and every allegation contained therein.

12 69. Answering paragraph 69 of Plaintiffs' SAC, SHAO denies
13 each and every allegation contained therein.

14 70. Answering paragraph 70 of Plaintiffs' SAC, SHAO
15 incorporates by reference his responses to paragraphs 1 through 69
16 of Plaintiffs' SAC as though fully set forth herein.

17 71. Answering paragraph 71 of Plaintiffs' SAC, SHAO denies
18 each and every allegation contained therein.

19 72. Answering paragraph 72 of Plaintiffs' SAC, SHAO denies
20 each and every allegation contained therein.

21 73. Answering paragraph 73 of Plaintiffs' SAC, SHAO denies
22 each and every allegation contained therein.

23 74. Answering paragraph 74 of Plaintiffs' SAC, SHAO
24 incorporates by reference his responses to paragraphs 1 through 73
25 of Plaintiffs' SAC as though fully set forth herein.

26 75. Answering paragraph 75 of Plaintiffs' SAC, SHAO denies
27 conversion of any funds of EWS and, based on lack of information
28 and belief, denies the remaining allegations contained therein.

1 76. Answering paragraph 76 of Plaintiffs' SAC, SHAO denies
2 any funds are owed to EWS and, based on lack of information and
3 belief, denies each and every allegation contained therein.

4 77. Answering paragraph 77 of Plaintiffs' SAC, SHAO denies
5 conversion of any funds of EWS and, based on lack of information
6 and belief, denies each and every allegation contained therein.

7 78. Answering paragraph 78 of Plaintiffs' SAC, SHAO
8 incorporates by reference his responses to paragraphs 1 through 76
9 of Plaintiffs' SAC as though fully set forth herein.

10 79. Answering paragraph 79 of Plaintiffs' SAC, based on lack
11 of information or belief, SHAO denies each and every allegation
12 contained therein.

13 80. Answering paragraph 80 of Plaintiffs' SAC, based on lack
14 of information or belief, SHAO denies each and every allegation
15 contained therein.

16 81. Answering paragraph 81 of Plaintiffs' SAC, based on lack
17 of information or belief, SHAO denies each and every allegation
18 contained therein.

19 82. Answering paragraph 82 of Plaintiffs' SAC, based on lack
20 of information or belief, SHAO denies each and every allegation
21 contained therein, except that KENNEDY made a written demand as
22 reflected in Exhibit 13 to Plaintiffs' SAC (letter from Steven T.
23 Coopersmith, attorney for KENNEDY, to co-counsel for SHAO, Sean M.
24 Foldenauer, Esq., dated November 29, 2011).

25 83. Answering paragraph 83 of Plaintiffs' SAC, based upon
26 lack of information or belief, SHAO denies each and every
27 allegation contained therein.

28 / / /

1 84. Answering paragraph 84 of Plaintiffs' SAC, SHAO, based
2 upon lack of information or belief, denies each and every
3 allegation contained therein.

4 85. Answering paragraph 85 of Plaintiffs' SAC, SHAO
5 incorporates by reference his responses to paragraphs 1 through 84
6 of Plaintiffs' SAC as though fully set forth herein.

7 86. Answering paragraph 86 of Plaintiffs' SAC, SHAO denies,
8 based on lack of information and belief, that KEYNOR was the entity
9 through which all transactions for EWS stone purchases were made
10 and denies the remaining allegations contained therein.

11 87. Answering paragraph 87 of Plaintiffs' SAC, SHAO denies
12 each and every allegation contained therein.

13 88. Answering paragraph 88 of Plaintiffs' SAC, SHAO denies
14 that he owes any money to EWS and, based on the lack of information
15 and belief, denies the balance of the allegations contained
16 therein.

17 89. Answering paragraph 89 of Plaintiffs' SAC, SHAO
18 incorporates by reference his responses to paragraphs 1 through 88
19 of Plaintiffs' SAC as though fully set forth herein.

20 90. Answering paragraph 90 of Plaintiffs' SAC, SHAO denies he
21 " . . . obtained assets of EWS, and converted EWS asset to [his]
22 personal use." SHAO denies each and every remaining allegation
23 contained in paragraph 90.

24 91. Answering paragraph 91 of Plaintiffs' SAC, SHAO denies he
25 fraudulently obtained any of EWS' assets, and/or provided the same
26 to KEYNOR ASIA.

27 / / /

28 / / /

1 92. Answering paragraph 92 of Plaintiffs' SAC, SHAO denies he
2 fraudulently obtained any of EWS' assets, and/or provided the same
3 to KEYNOR ASIA.

4 93. Answering paragraph 93 of Plaintiffs' SAC, SHAO
5 incorporates by reference his responses to paragraphs 1 through 92
6 of Plaintiffs' SAC as though fully set forth herein.

7 94. Answering paragraph 94 of Plaintiffs' SAC, based on lack
8 of information or belief, SHAO denies each and every allegation
9 contained therein.

10 95. Answering paragraph 95 of Plaintiffs' SAC, SHAO denies
11 each and every allegation contained therein.

12 96. Answering paragraph 96 of Plaintiffs' SAC, SHAO denies
13 each and every allegation contained therein.

14 97. Answering paragraph 97 of Plaintiffs' SAC, SHAO denies
15 that he owes any monies to EWS and, based on lack of information
16 and belief, denies the balance of the allegations contained
17 therein.

18 **AFFIRMATIVE DEFENSES**

19 Upon information and belief, and based upon all facts and
20 allegations which may be incorporated by reference herein, this
21 answering Defendant further alleges the following Affirmative
22 Defenses to this Second Amended Complaint and each cause of action
23 therein:

24 / / /

25 / / /

26 / / /

27 / / /

28 / / /

1 **FIRST AFFIRMATIVE DEFENSE**
 2 (Failure to State a Cause of Action)

3 98. The Second Amended Complaint, and each and every
 4 purported cause of action contained therein, separately and/or
 5 jointly, fails to state facts sufficient to constitute a cause of
 6 action against this answering Defendant.

7 **SECOND AFFIRMATIVE DEFENSE**
 8 (Statute of Limitations)

9 99. The allegations of the Second Amended Complaint do not
 10 allege facts sufficient to constitute a cause of action against
 11 this answering Defendant, in that they are barred by the statutes
 12 of limitation in the *Code of Civil Procedure* including but not
 13 limited to *Code of Civil Procedure* sections 337, 338, 339, and 343,
 14 and *Civil Code* § 2079.4, and each pertinent subsection and
 15 applicable federal limitation periods.

16 **THIRD AFFIRMATIVE DEFENSE**
 17 (Estoppel)

18 100. Plaintiffs are barred from the recovery, relief and/or
 19 remedies alleged and prayed for in said Second Amended Complaint
 20 and each and/or any of the causes of action contained therein by
 21 reason that Plaintiffs' conduct is estopped and Plaintiffs are
 22 barred from asserting that they, or each of them, have a right to
 23 the relief, recovery and/or remedies alleged and prayed for in said
 24 Second Amended Complaint and/or the causes of actions therein or
 25 any other relief or remedies, or in the sums alleged therein or in
 26 any other sum or amount or at all, by reasons of acts, omissions,
 27 representations and courses of conduct by Plaintiffs upon which
 28 this answering Defendant was led to rely to his detriment.

FOURTH AFFIRMATIVE DEFENSE

(Business Judgment Rule)

101. Plaintiffs are barred from the recovery, relief and/or remedies alleged and prayed for in said Second Amended Complaint, and each and/or any of the causes of action contained therein, by reason that this answering Defendant, as a managing member of EWS, has exercised good faith and reasonable business judgment in the discharge of his duties, if any, and that under the Business Judgment Rule, and related law, this answering Defendant is not liable to the Plaintiffs for any damages of any kind.

FIFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

102. Plaintiffs have engaged in unlawful, immoral, careless, negligent and other wrongful conduct and Plaintiffs should be barred from recovering the relief and/or remedies alleged and prayed for in said Second Amended Complaint and each and/or any of the causes of action contained therein, or any other relief or remedies whatsoever, against this answering Defendant under the equitable doctrines of "unclean hands" and of *in pari delicto*.

SIXTH AFFIRMATIVE DEFENSE

(Failure to Qualify for Equitable Relief)

103. Plaintiffs, by their actions, have failed to meet the legal standards and requirements for being granted equitable relief and therefore, by their actions, Plaintiffs are precluded from seeking or otherwise demanding any equitable or injunctive relief prayed for in said Second Amended Complaint, or of any kind or any other relief or remedies at all.

/ / /

SEVENTH AFFIRMATIVE DEFENSE

(Laches)

104. Plaintiffs are barred from maintaining the pending action and from recovering the relief or remedies alleged and prayed for in said Second Amended Complaint, and each and/or any of the causes of action alleged therein, or any other relief or remedies, in any other sum or amount or at all, by reason of Plaintiffs' unreasonable delay and laches which have unfairly and unreasonably prejudiced this answering Defendant, which creates an inability for said answering Defendant to properly defend this action and creates irreparable injury, harm, prejudice and hardship to this answering Defendant.

EIGHTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

105. Plaintiffs are barred and precluded from the recovery, relief and/or remedies alleged and prayed for in said Second Amended Complaint, and each of the causes of action contained therein, by reason and on the grounds of the Plaintiffs' failure to minimize, reduce and/or mitigate the alleged suffered, sustained and/or incurred damages, if any (which this answering Defendant expressly denies), or to otherwise pursue and exercise any and all other efforts, procedures and action in order to minimize, mitigate and/or recover the alleged and purported damages, if any, alleged to have been incurred, suffered and sustained as set forth and alleged in said Second Amended Complaint. This answering Defendant is informed and believes and thereon alleges that if Plaintiffs had undertaken to mitigate these damages, then Plaintiffs would have suffered no damage whatsoever.

NINTH AFFIRMATIVE DEFENSE
(Comparative Fault)

106. Plaintiffs are barred from the recovery, relief and/or remedies alleged and prayed for in said Second Amended Complaint, and each and/or any of the causes of action contained therein, by reason that the damages, if any (and which this answering Defendant expressly denies herein), which Plaintiffs have alleged to have been incurred, suffered and sustained are in fact the result of Plaintiffs' own negligent conduct, misconduct, wrongs, omissions and failures to act reasonably and prudently and which is the sole and proximate cause of any alleged damages, if any (which this answering Defendant expressly denies herein), and not as a result of any action, alleged breach or omission on the part of this answering Defendant or any of his respective and/or authorized representatives, servants, agents and/or employees. If it is adjudicated and determined that Plaintiffs are, in fact, entitled to recovery for any loss or damage suffered in connection with the matters alleged and set forth in said Second Amended Complaint, or any of the causes of action contained therein (and which this answering Defendant expressly denies herein), any total amount of damages to which Plaintiffs would otherwise be entitled must be reduced in proportion to the degree and amount of wrongdoing, fault or negligence attributable and allocated to Plaintiffs and which such wrongdoing, fault or negligence directly and proximately contributed to Plaintiffs' alleged loss or damage.

/ / /

/ / /

/ / /

TENTH AFFIRMATIVE DEFENSE

(Defendants' Offset)

107. Any and all amounts of monies claimed by Plaintiffs in said Second Amended Complaint, and the causes of action contained therein, which the Court may determine to be due and owed to Plaintiffs (despite the express denial by this answering Defendant), shall and are deemed to be paid pursuant to *Section 431.70 of the California Code of Civil Procedure*, or any amended or successor statute thereto, to the extent that there are any sums owed by Plaintiffs to this answering Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

(Superseding Causes)

108. Plaintiffs are barred from the recovery, relief and/or remedies alleged and prayed for in said Second Amended Complaint, and each and/or any of the causes of action contained therein, by reason that the injuries and/or damages of which the Plaintiffs complain (which are expressly denied by this answering Defendant) were proximately caused or contributed to by the acts and/or omissions of other persons or entities. Said acts were an intervening, supervening and superseding cause of the injuries and/or damages claimed, if any, thus barring Plaintiffs from any recovery against this answering Defendant.

TWELFTH AFFIRMATIVE DEFENSE

(Acquiescence and Ratification)

109. Plaintiffs are barred from the recovery, relief and/or remedies alleged and prayed for in said Second Amended Complaint, and each and/or any of the causes of action contained therein, by reason that at all times mentioned said Complaint, Plaintiffs

1 approved, ratified, and/or acquiesced in the conduct of this
 2 answering Defendant. Plaintiffs are therefore barred from
 3 recovering damages, if any, as a result of any conduct, act or
 4 omission on the part of this answering Defendant because of
 5 Plaintiffs' approval or, ratification of, and/or acquiescence in
 6 that conduct.

7 **THIRTEENTH AFFIRMATIVE DEFENSE**
 8 (Waiver)

9 110. Plaintiffs are barred from the recovery, relief and/or
 10 remedies alleged and prayed for in said Second Amended Complaint,
 11 and each and/or any of the causes of action contained therein, by
 12 reason that Plaintiffs have engaged in conduct and activities
 13 sufficient to constitute a waiver of any alleged breach of duty,
 14 negligence, act or omission, or any other conduct.

15 **FOURTEENTH AFFIRMATIVE DEFENSE**
 16 (No Reliance by Plaintiff)

17 111. Plaintiffs are barred from the recovery, relief and/or
 18 remedies alleged and prayed for in said Second Amended Complaint,
 19 and each and/or any of the causes of action contained therein, by
 20 reason that at no time did Plaintiffs, their agents, servants, or
 21 representatives rely on any representation, promise, warranty, or
 22 action, which this answering Defendant, his agents or employees,
 23 may have made in connection with any of the activities underlying
 24 this action.

25 / / /

26 / / /

27 / / /

28 / / /

FIFTEENTH AFFIRMATIVE DEFENSE

(Condition Precedent)

112. Plaintiffs are barred from the recovery, relief and/or remedies alleged and prayed for in said Second Amended Complaint, and each and/or any of the causes of action contained therein, by reason that there has been nonperformance of a condition precedent to any alleged duties, contractual or otherwise on the part of this answering Defendant, his agents and employees.

SIXTEENTH AFFIRMATIVE DEFENSE

(Condition Subsequent)

113. Plaintiffs are barred from the recovery, relief and/or remedies alleged and prayed for in said Second Amended Complaint, and each and/or any of the causes of action contained therein, by reason that there has occurred a condition subsequent to the making of a duty, or any alleged contract, between the parties, thereby excusing this answering Defendant from any further performance due from any Defendant to the Plaintiffs and terminating any obligation by this answering Defendants to Plaintiffs.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Justification and Privilege)

114. Plaintiffs are barred from the recovery, relief and/or remedies alleged and prayed for in said Second Amended Complaint, and each and/or any of the causes of action contained therein, by reason that this answering Defendant, was justified in his acts and omissions, and that any such acts or omissions and conduct of this answering Defendant were privileged and not actionable.

/ / /

/ / /

EIGHTEENTH AFFIRMATIVE DEFENSE

(Frustration of Purpose)

115. Plaintiffs are barred from the recovery, relief and/or remedies alleged and prayed for in said Second Amended Complaint, and each and/or any of the causes of action contained therein, by reason that the obligations of this answering Defendant, if any, arising from the alleged contracts or duties as alleged by Plaintiffs, were excused based upon the conduct of the Plaintiffs and/or their agent(s) which has impeded, interfered, and prevented this answering Defendant from completing said duties or contracts, thus barring Plaintiffs' claim(s).

NINETEENTH AFFIRMATIVE DEFENSE

(Prevention of Performance)

116. Plaintiffs are barred from the recovery, relief and/or remedies alleged and prayed for in said Second Amended Complaint, and each and/or any of the causes of action contained therein, by reason that, this answering Defendant was prevented from performing any obligation that he may have owed to the Plaintiffs, if any.

TWENTIETH AFFIRMATIVE DEFENSE

(Performance Excused)

117. Plaintiffs are barred from the recovery, relief and/or remedies alleged and prayed for in said Second Amended Complaint, and each and/or any of the causes of action contained therein, by reason that any failure on the part of this answering Defendant to perform the obligations described in said Complaint is excused by Plaintiffs' own breach of contract and/or lack of consideration.

/ / /

/ / /

1 **TWENTY-FIRST AFFIRMATIVE DEFENSE**
 2 (Violations of *Corporations Code*)

3 118. Plaintiffs are barred from the recovery, relief and/or
 4 remedies alleged and prayed for in said Second Amended Complaint,
 5 and each and/or any of the causes of action contained therein, by
 6 reason that Plaintiffs' causes of action for relief under the
 7 *California Corporations Code* are barred by Plaintiffs' own failure
 8 to comply with relevant provisions of the *Corporations Code*.

9 **TWENTY-SECOND AFFIRMATIVE DEFENSE**
 10 (Indemnity)

11 119. Plaintiffs are barred from the recovery, relief and/or
 12 remedies alleged and prayed for in said Second Amended Complaint,
 13 and each and/or any of the causes of action contained therein, by
 14 reason that this answering Defendant was not legally responsible in
 15 any fashion with respect to the damages claimed by Plaintiffs.
 16 However, if this answering Defendant is found to be legally
 17 responsible, then he provisionally alleges that his legal
 18 responsibility is not the sole and proximate cause of the incident,
 19 and that the damages awarded to Plaintiffs, if any, are to be
 20 apportioned according to their respective fault and legal
 21 responsibility of other parties, persons and entities, or the
 22 agents, servants and employees who contributed to and/or caused
 23 said incidents, according to proof at trial.

24 **TWENTY-THIRD AFFIRMATIVE DEFENSE**
 25 (Speculative Damages)

26 120. Plaintiffs are barred from the recovery, relief and/or
 27 remedies alleged and prayed for in said Second Amended Complaint,
 28 and each and/or any of the causes of action contained therein, by

1 reason that Plaintiffs' damages, if any, are speculative and based
 2 on conjecture, and are impossible to ascertain or allocate.

3 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

4 (No Knowledge, Authorization or Ratification)

5 121. Plaintiffs are barred from the recovery, relief and/or
 6 remedies alleged and prayed for in said Second Amended Complaint,
 7 and each and/or any of the causes of action contained therein, by
 8 reason that if any person or entity engaged in any unlawful conduct
 9 alleged in said Complaint, such conduct was undertaken without this
 10 answering Defendant's knowledge, authorization, or ratification.

11 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

12 (Action Brought in Bad Faith)

13 122. Plaintiffs are barred from the recovery, relief and/or
 14 remedies alleged and prayed for in said Second Amended Complaint,
 15 and each and/or any of the causes of action contained therein, by
 16 reason that Plaintiffs have asserted causes of action in bad faith
 17 and is liable to this answering Defendant for attorneys' fees and
 18 costs incurred in defending such causes of action.

19 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

20 (Additional Defenses)

21 123. This answering Defendant presently has insufficient
 22 knowledge or information upon which to form a belief as to whether
 23 he may have additional, as yet unknown, affirmative defenses. This
 24 answering Defendant therefore reserves the right to assert
 25 additional affirmative defenses in the event discovery indicates it
 26 would be appropriate.

27 / / /

28 / / /

1 **WHEREFORE**, this answering Defendant prays that Plaintiffs take
2 nothing by their action, that this answering Defendant be awarded
3 his cost of suit, including attorneys' fees, and for such other
4 relief as the Court deems just and proper.

5
6 February 17, 2012

THE LaCROIX LAW GROUP, APC

7
8 /s/ Robert E. LaCroix
Robert E. LaCroix
Attorney for Defendant/Cross-Complainant
9 WUI SHAO, aka RAYMOND SHAO
E-mail: robert@lacroixlaw.com
10

11
12 February 17, 2012

FOLDENAUER LAW GROUP, APC

13
14 /s/ Sean M. Foldenauer
Attorney for Defendant/Cross-Complainant
15 WEI SHAO, aka RAYMOND SHAO
E-mail: foldenauerlaw@gmail.com
16
17
18
19
20
21
22
23
24
25
26
27
28